# APPENDIX.

## EXHIBIT 1.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit

No. 8371.
OCTOBER TERM, 1944, JANUARY SESSION, 1945.

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|---|---|
| MARQUETTE CEMENT MANUFACTURING COMPANY, *Petitioner,* *vs.* FEDERAL TRADE COMMISSION, *Respondent.* | Motion to Reconsider and Reverse the Orders of July 31, 1944. |

January 29, 1945.
(Reported, 147 F. (2d) 589.)

Before MAJOR and KERNER, *Circuit Judges,* and BRIGGLE, *District Judge.*

MAJOR, *Circuit Judge.* There are pending in this court numerous petitions to review a cease and desist order entered by the Federal Trade Commission on

July 17, 1943. On July 31, 1944, this court entered two orders denying certain applications to adduce additional evidence, without prejudice to the right of renewal upon hearing on the merits. Included in such applications was that of the Marquette Cement Manufacturing Company (instant petitioner) to adduce additional evidence in support of its motion to recuse the members of the Commission from passing on the issues presented by the Commission's complaint.

On November 14, 1944, petitioner filed its motion requesting this court to reconsider and reverse its orders of July 31, 1944, insofar as they relate to petitioner's right to adduce additional evidence in support of its contention that the Commission was disqualified. We have also been urged to decide in advance of a hearing upon the merits petitioner's contention that the Commission was disqualified. Obviously, if petitioner's contention in this respect is sustained, it would follow that the Commission's cease and desist order would have to be vacated and set aside. We have concluded that it would be appropriate to hear and decide in advance this issue thus raised. We have, therefore, heard oral argument on this issue and have been favored with extensive briefs pertaining thereto.

Petitioner and seventy-four other producers of Portland cement were charged under § 5 of the Federal Trade Commission Act (15 U. S. C. A. § 45b), by a complaint filed July 2, 1937, with engaging in unfair competition by entering into a combination among themselves through an agreement to employ and the

actual employment of "what is known as a multiple basing point system of pricing." The substance of the charge is that by the employment of this system such cement producers violated the anti-trust laws, particularly the Sherman and Clayton Acts. Such charges were denied, and upon the issue thus formed hearings were had which extended from December 1, 1937 to November 29, 1940, in which Marquette actively participated. On December 16, 1941, more than a year after the taking of testimony had been concluded, Marquette in its brief asserted for the first time that the Commission had prejudged the issues, and in support of such assertion set forth excerpts from certain publications of the Commission published both before and after the commencement of the proceedings. Not until May of 1942 and at the time of oral argument before the Commission did Marquette formally charge the Commission with being disqualified.

At that time, it filed what it termed a petition, motion and supporting affidavit by Marquette's counsel "to recuse the Federal Trade Commission from passing upon the issues." There were also submitted, in support of Marquette's petition, twenty-three exhibits, which in the main consisted of reports made by the Commission either to the Congress or to the President, as is authorized by § 6 of the Trade Commission Act. These reports covered a period from 1927 to 1941, and had to do largely with the Commission's theory as to the result produced by use of the basing point price system and variations of such system, such as the mul-

tiple basing point price system. They treated of the use of such price systems by industry generally, and particularly the steel industry. They also disclose that the Commission regarded the cement industry in the same category, as far as price fixing was concerned, as steel and other industries.

The Commission denied Marquette's motion to recuse and also denied leave to introduce Marquette's exhibits offered in support thereof. In making up the record, however, which has been certified to this court, the exhibits have been included and are before us. In view of this situation, we think there is no need of a formal ruling upon the Commission's refusal to admit such exhibits in evidence. Furthermore, we think that a detailed statement of their contents is unnecessary. The most that can be said of them is that the Commission from numerous investigations had formed an opinion that the basing point price system, as well as the multiple system, was illegal. We think it is also fairly inferable that the Commission had formulated such an opinion concerning the cement industry. We may assume, and for the purpose of the question before us do assume, that such was the case.

The basis of the charge that the Commission was disqualified from hearing, trying and passing upon the issues involved was that it "is not a tribunal free from bias and prejudice," and that prior to the filing of the complaint and subsequent thereto it had expressed a "prejudgment of the issues in this cause and was prejudiced and biased against the Portland cement in-

dustry generally," and that such industry, and particularly Marquette, could not receive a fair and impartial hearing. Petitioner, in its brief filed in this court, elaborates upon its charge that the Commission was disqualified and states:

> "By that we mean that by the rules of fair play, which men of honor have followed since the dawn of civilization, * * * it has consistently been held to be fundamental and indispensable that triers of the facts shall be unbiased and non-partisan."

The Commission, in support of its order refusing to disqualify itself, relies upon three propositions: (1) that petitioner's motion to disqualify, long after the hearings had been completed and after briefs had been submitted, was not made in apt time; (2) the facts on which petitioner relies do not constitute disqualification; and (3) the law does not permit disqualification on the basis of the facts relied on by petitioner.

As hereinafter decided, we think the Commission could not be disqualified in the manner attempted, but assuming it could be, we are of the view that the attempt to disqualify was made too late. If we were disposed to rest our decision merely upon this basis, we would set forth the substance of the affidavit made by counsel for Marquette and attached to its petition to recuse the Commission, which is relied upon as showing the reason or excuse for the delay. Inasmuch, however, as we shall consider the merits of the charge, we think it is sufficient to observe that we have read counsel's affidavit and are not impressed with the rea-

sons assigned for the tardiness in making the motion to recuse.

On the merits, we know of no case which has expressly passed upon the question as to whether an administrative agency created by Congress can be required to disqualify itself because of bias, prejudice or prejudgment. The cases with closest analogy are those concerned with the disqualification of a judge. In sharp contrast, however, is the fact that Congress in creating the Federal Trade Commission made no provision for the disqualification of its members, while it has made such provision for the disqualification of a judge. Also, it seems plain that if the statutory reasons for disqualifying a judge be applied to the Federal Trade Commission, the showing in the instant case was insufficient for the reason that neither the motion nor affidavit contained an allegation that the prejudice or bias was "personal."

§ 21 of the Judicial Code (28 U. S. C. A. 25) provides for the disqualification of a judge upon the filing of an affidavit that such judge "has a personal bias or prejudice either against him (affiant) or in favor of an opposite party to the suit." It also provides that the affidavit shall state the reasons for the belief that such bias or prejudice exists, and that the affidavit must be filed ten days before the beginning of the term of court or good cause shown for failure to file within such time. It is also required that the affidavit be accompanied by a certificate of a counsel of record that such affidavit and application are made in good faith. That this sec-

tion of the statute must be literally and strictly observed in order to disqualify a judge is not open to question. Cf. *Ex Parte American Steel Barrel Co.*, 230 U. S. 35, 43. It has been held that the bias or prejudice alleged must be "personal," and that a mere prejudgment of the case is not sufficient. *Henry* v. *Speer*, 201 Fed. 869, 872; *Price* v. *Johnston*, 125 F. 2d 806, 812. That the affidavit of personal bias and prejudice shall not be filed unless accompanied by a "certificate of counsel." *Beland* v. *United States*, 117 F. 2d 958, 960; *Mitchell* v. *United States*, 126 F. 2d 550, 552. That the affidavit of disqualification must be filed in apt time. *Scott* v. *Beams*, 122 F. 2d 777, 789; *Refior* v. *Lansing Drop Forge Co.*, 124 F. 2d 440, 445. In *Fish* v. *East*, 114 F. 2d 177, it was sought to disqualify a referee in bankruptcy, under § 21, for bias and prejudice. The court held the disqualification provision inapplicable to a referee, and in so doing stated (page 200):

> "There appears to be no rules either of said district, or in the rules of civil procedure, or in the general orders, relating to the removal or disqualification of referees. A party aggrieved by an order of the referee may file a petition for review."

These cases construing § 21 have been cited for the purpose of showing the strict construction which courts have placed upon the right of a party litigant to disqualify a judge. In this connection, it is pertinent to observe that the cases are not concerned with what a judge might or should do when confronted with a

charge of bias or prejudice but what he must do under the statutory provision, or, in other words, the precise steps which a litigant must take before he is entitled as a matter of right to disqualify. Likewise, in the instant situation, from a strictly legal standpoint, we are not concerned, we have no right to be concerned, with what the Commission could or might do when faced with a similar charge. The query for decision is whether the Commission was required under the law to disqualify itself, or, conversely, whether Marquette had a legal right to effect such disqualification.

We find no basis in the law for an affirmative answer to this question. Congress is the creator of all inferior federal courts, as well as administrative agencies. The jurisdiction and authority of each is confined solely to that which Congress bestows. There are no limitations upon this congressional power other than the Constitution. Congress has conferred upon a litigant the right to challenge the qualification of a judge, provided such litigant complies with the statutory mandate. On the other hand, no such right has been conferred upon a litigant before the Federal Trade Commission. In our view, the right to disqualify a trier of facts created by Congress, whether it be a judge or an administrative agency, is a matter for Congress. Such right may be conferred or withheld as Congress deems advisable.

The view which we have just stated finds support in *Tumey* v. *Ohio*, 273 U. S. 510. In that case, the law of the state of Ohio conferred upon village mayors the

right to try those charged with certain misdemeanors. Their compensation was derived in part from fines collected in such cases. The court held that the judgment of a court, the judge of which has a direct, personal and substantial pecuniary interest in reaching a conclusion against him, deprives such defendant of due process of law in violation of the Fourteenth Amendment. The court, however, on page 523 stated:

> "All questions of judicial qualification may not involve constitutional validity. Thus matters of kinship, personal bias, state policy, remoteness of interest, would seem generally to be matters merely of legislative discretion."

Closely akin to the legislative discretion theory is one sometimes referred to as "the rule of necessity." This rule is applicable upon attempts to disqualify both courts and administrative agencies. In *Montana Power Co.* v. *Public Service Commission*, 12 F. Sup. 946, it was sought to disqualify a member of a state administrative agency because such member had prejudged the case prior to hearing. The court cites numerous cases to the effect that a member of an administrative agency is not subject to disqualification in the absence of a statutory provision conferring such right. The court applied "the rule of necessity" (page 949), quoting from R. C. L.:

> "The true rule unquestionably is that wherever it becomes necessary for a judge to sit, even where he has an interest, if no provision is made for calling another in, or where no one else can take

his place, it is his duty to hear and decide, however disagreeable it may be."

In *Brinkley* v. *Hassig*, 83 F. 2d 351, the court also applied the rule to a state administrative agency, and in so doing stated (page 357):

"From the very necessity of the case has grown the rule that disqualification will not be permitted to destroy the only tribunal with power on the premises."

In the recent case of *Laughran* v. *Federal Trade Commission*, 143 F. 2d 431, one of the points relied upon was that the Commissioners had disqualified themselves from sitting as an impartial, fact finding body. While the court appears to have disposed of the contention largely on the premise that the attack upon the Commission was not timely, it also pointed out (page 433):

"* * * the Federal Trade Commission Act establishes the composition of the Commission and contains no provision for change of venue. The 'stern rule of necessity' required the Commission to act in the proceeding." (Citing cases.)

In *United States* v. *Morgan*, 313 U. S. 409, it was sought to disqualify the Secretary of Agriculture on the ground that he had prejudged the issue for decision. After pointing out that none other than the Secretary had legal authority to make the order in controversy, the court stated (page 421):

"Plainly enough, when it was thus suggested that he create a situation in which no order could

be made, the Secretary was offered no escape from his duty even had he preferred to consult the comforts of personal convenience."

In its endeavor to escape this "rule of necessity," Marquette contends that the Department of Justice has concurrent power or jurisdiction with the Trade Commission to enforce or secure the restraint of the Sherman and Clayton Acts. It is true that § 4 (15 U. S. C. A. § 4) of the former and § 15 (15 U. S. C. A. § 25) of the latter authorize district attorneys of the United States, under the direction of the Attorney General, to institute equitable proceedings to prevent and restrain violation of such Acts. It does not follow, however, that the Department of Justice or a court, when such proceeding is instituted, has concurrent power or jurisdiction with the Federal Trade Commission. True, the issues may be similar, but the fact remains that the Federal Trade Commission is the only tribunal clothed with the power and charged with the responsibility of protecting the public against unfair methods of competition and price discrimination. It is also certain that proceedings instituted by it could not be removed to any other tribunal for hearing. If the Commission be disqualified, it undoubtedly follows that the complaint in the instant case would remain untried. Under these circumstances, as the authorities show, "the rule of necessity" requires that the Commission be permitted to hear the case.

As we understand, the contention is not advanced by Marquette that the failure of the Commission to dis-

qualify itself constitutes a lack of due process. Nevertheless, it is pertinent to observe that the order of the Commission does not become effective until an opportunity has been afforded for review. Under such circumstances, it has frequently been held that the order of an administrative agency is not a deprivation of due process. *Porter* v. *Investors' Syndicate*, 286 U. S. 461; *United States* v. *Illinois Central R. Co.*, 291 U. S. 457, 463; *Nickey* v. *Mississippi*, 292 U. S. 393, 396; *Ohio Bell Telephone Co.* v. *Commission*, 301 U. S. 292, 303.

In conclusion, we are not unsympathetic to the criticism directed at the Commission by Marquette, a criticism much aimed at all administrative agencies, to the effect that their multiple functions as prosecutor, judge and jury constitute an abridgement of the cherished right to a fair and impartial hearing. On the other hand, as already pointed out, they are the creatures of Congress and it is not within the province of courts either to emasculate or enlarge the powers which it has conferred. Any appeal for relief should be made to Congress rather than to the courts.

For the reasons stated, it is our conclusion that the Commission acted within its authority in denying Marquette's motion to recuse its members from trying and deciding the issues involved. It follows that the orders entered by this court on July 31, 1944, insofar as they pertain to such motion, were properly entered. The instant motion to vacate and set aside is, therefore, denied.

## EXHIBIT 2.

**Descriptive List of Marquette's Exhibits Which Were a Part of Marquette's Petition to Recuse the Trade Commission, Which Was a Part of the Record Certified by the Commission to the Court Below. (The exhibits are on file in this Court.)**

Marquette's Exhibits Nos. 1 through 15. Annual Reports of the Federal Trade Commission for all fiscal years beginning after June 30, 1926, to and including the fiscal year ended June 30, 1941.

Marquette's Exhibit No. 16. Report of the Federal Trade Commission on Price Bases Inquiry. The Basing Point Formula and Cement Prices. March, 1932.

Marquette's Exhibit No. 17. Cement Industry: Senate Document No. 71, 73rd Congress, 1st Session. Report by the Federal Trade Commission to the Senate, June, 1933.

Marquette's Exhibit No. 18. Practices of the Steel Industry Under the Code, Senate Doc. No. 159, being a letter from the Chairman of the Federal Trade Commission transmitting in response to Senate Resolution No. 166 a report on the steel industry and the "Code of Fair Competition," relating to that industry, dated March 20, 1934.

Marquette's Exhibit No. 19. Report of the Federal Trade Commission to the President with respect to the "The Basing Point Problem," printed for the use of November, 1934.

Marquette's Exhibit No. 20. Statements of Honorable R. E. Freer and Hugh E. White, on behalf of the Federal Trade Commission, at Hearings before the Committee on Interstate Commerce, U. S. Senate 74th Congress, second session on S. 4055 March 9 to April 10, 1936 appearing at pages 309-325 and 389-393 of a transcript of said hearings.

Marquette's Exhibit No. 21. Federal Trade Commission Report to the President on Steel Sheet Piling, dated June 10, 1936.

Marquette's Exhibit No. 22. Press Release of Federal Trade Commission, dated July 5, 1937, on the issuance of the Complaint in the instant proceeding.

Marquette's Exhibit No. 23. Investigation of Concentration of Economic Power, Monograph No. 42. "The Basing Point Problem," printed for the use of the Temporary National Economic Committee, 1941.

EXHIBIT 3-A.

IN THE

# DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLORADO.

UNITED STATES OF AMERICA,
*Complainant,*
*vs.*
CEMENT INSTITUTE, *et al.*,
*Defendants.*
} Civil No. 1291.

## COMPLAINT.

(Filed June 28, 1945.)

*To the Honorable, the Judge of the District Court of the United States for the District of Colorado:*

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, complains and alleges upon information and belief:

### I. JURISDICTION AND VENUE.

1. This complaint is filed and these proceedings are instituted under Section IV of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" (15 U. S. C., Sec. 4), said act being commonly

known and hereinafter referred to as the Sherman Act, against the defendants named herein in order to prevent further violations by them, jointly and severally, as hereinafter alleged, of Section 1 of said act (15 U. S. C. 1).

2. The alleged unlawful acts and violations hereinafter described, including the contracts, combinations and conspiracies to restrain trade and commerce among the several states of the United States, have been, and are conceived, carried out and made effective in part within the District of Colorado, and many of the unlawful acts done pursuant thereto have been performed by the defendants, or some of them, and their respective representatives within said district within the three years next preceding the date of the filing of this complaint. Defendants Arkansas Portland Cement Company, Colorado Portland Cement Company, Gulf Portland Cement Company, Nebraska Cement Company, Oklahoma Portland Cement Company, Three Forks Portland Cement Company, Union Portland Cement Company; United Portland Cement Company, and Ideal Cement Company, have their principal places of business in Denver, Colorado, and do business within the District of Colorado. The interstate trade and commerce involved in the cement industry, as hereinafter described, are carried on in part within the District of Colorado.

## II. Definitions.

3. The term "Portland Cement," as used herein, means the intimately ground mixture of calcined limestone and clay which conforms to the United States Government's specifications for Standard Portland Cement.

4. The term "producer," as used herein, means any person, partnership or corporation engaged in the production, manufacture and sale of Portland Cement.

5. The term "dealer," as used herein, means any person, partnership or corporation engaged in the purchase of Portland Cement from producers for sale and distribution at retail to builders, contractors and other users.

6. The term "base mill," as used herein, means a mill which quotes delivered prices only, such prices being based upon its f.o.b. price plus freight to destination.

7. The term "non-base mill," as used herein, means a mill which adopts as its selling price the delivered price of the base mill located nearest to the point of delivery.

8. The term "base mill price," as used herein, means the price maintained by a base mill at the point of production.

9. The term "f.o.b. net mill price," as used herein, means the price actually received by a mill after deduction of the actual transportation charge paid to the carrier.

10. The term "multiple basing point system," as used herein, means a system under which certain cement mills are designated as base mills, and other cement mills are designated as non-base mills, and under which the delivered prices for cement sold both by base mills and non-base mills are calculated on the basis of combining the f.o.b. mill price of, and the all-rail freight rate from, the base mill closest freightwise to the point of delivery.

11. The term "punitive basing point," as used herein, means a basing point imposed or established at or near non-base mills which have quoted delivered prices at less than the formula price of the basing point system, which reduces the net price of the non-base mill.

12. The term "phantom freight," as used herein, means the excess of the freight item used in calculating the delivered price and retained by the seller, over the actual freight paid the carrier for delivery to point of destination.

13. The term "absorbed freight," as used herein, means the excess of the actual freight paid the carrier for delivery to point of destination and absorbed by the seller, over the amount of the freight item used in calculating the delivered price.

14. The term "land grant rates," as used herein, means special rates received by the Federal Government from so-called land grant railroads on shipments made for the Government on Government bills of lading.

## III. The Defendants.

15. The Cement Institute, hereinafter sometimes called "The Institute," is an unincorporated trade association comprised of concerns engaged in the manufacture and sale of cement throughout the United States. It was organized in 1929, and maintains its principal place of business in Chicago, Illinois. It was organized for the purposes, among others, of collecting and disseminating trade statistics among its members, on the production, sale and delivery of cement; of adopting a so-called "code of ethics" for its members; and of reporting on specific job contracts. The Cement Institute is made a defendant herein.

16. The following corporations, hereinafter sometimes referred to as "defendant manufacturers," are made defendants herein. Each of the defendant manufacturers has been a member of defendant Institute during all or a part of the time since the Institute was organized, and is engaged in the manufacture and sale of cement. The abbreviated name, state of incorporation and principal place of business of the defendant manufacturers are indicated below.

| Name of Corporation | Abbreviated Name | State of Incorporation | Principal Place of Business |
|---|---|---|---|
| Aetna Portland Cement Company | Aetna | Maine | Bay City, Mich. |
| Allentown Portland Cement Company | Allentown | Pennsylvania | Catasauqua, Pa. |
| Alpha Portland Cement Company | Alpha | New Jersey | Easton, Pa. |
| Arkansas Portland Cement Company | Arkansas | Arkansas | Denver, Colo. |
| Ash Grove Lime and Portland Cement Company | Ash Grove | Maine | Kansas City, Mo. |
| Beaver Portland Cement Company | Beaver | Oregon | Portland, Oregon |

| Name of Corporation | Abbreviated Name | State of Incorporation | Principal Place of Business |
|---|---|---|---|
| The Bessemer Limestone and Cement Company | Bessemer | Ohio | Youngstown, Ohio |
| Calaveras Cement Company | Calaveras | Delaware | San Francisco, California |
| California Portland Cement Company | California | California | Los Angeles, California |
| Castalia Portland Cement Company | Castalia | Pennsylvania | Pittsburgh, Pennsylvania |
| Colorado Portland Cement Company | Colorado | Colorado | Denver, Colo. |
| Consolidated Cement Corporation | Consolidated | Delaware | Chicago, Ill. |
| Coplay Cement Manufacturing Company | Coplay | Pennsylvania | Coplay, Pa. |
| Cowell Portland Cement Company | Cowell | California | San Francisco, California |
| Cowham Engineering Company | Cowham | Delaware | Chicago, |
| Cumberland Portland Cement Company | Cumberland | Delaware | Cowan, Tenn. |
| Dewey Portland Cement Company | Dewey | West Virginia | Kansas City, Missouri |
| Diamond Portland Cement Company | Diamond | Ohio | Middle Branch, Ohio |
| Edison Cement Corporation | Edison | New Jersey | West Orange, New Jersey |
| Federal Cement Corporation, Inc. | Federal | New York | Lake Shore Rd. P. O. Box 115 New York |
| Florida Portland Cement Company | Florida | Delaware | Chicago, Ill. |
| Georgia Cement and Products Company | Georgia | Georgia | Atlanta, Ga. |
| Giant Portland Cement Company | Giant | Delaware | Philadelphia, Pennsylvania |
| Glens Falls Portland Cement Company | Glens Falls | New York | Glens Falls, New York |
| Great Lakes Portland Cement Corporation | Great Lakes | Indiana | Buffalo, N. Y. |
| Green Bag Cement Company of Pennsylvania | Green Bag | Pennsylvania | Pittsburgh, Pa. |
| Green Bag Cement Company | Green Bag | West Virginia | Pittsburgh, Pa. |
| Gulf Portland Cement Company | Gulf Portland | Texas | Denver, Colo. |
| Hawkeye Portland Cement Company | Hawkeye | West Virginia | Des Moines, Iowa |
| Hercules Cement Corporation | Hercules | Pennsylvania | Philadelphia, Pennsylvania |
| Hermitage Portland Cement Company | Hermitage | Delaware | Nashville, Tennessee |
| Huron Portland Cement Company | Huron | Michigan | Detroit, Mich. |
| Idaho Portland Cement Company | Idaho | Ohio | Spokane, Wash. |

| Name of Corporation | Abbreviated Name | State of Incorporation | Principal Place of Business |
|---|---|---|---|
| Ideal Cement Company | Ideal | Colorado | Denver, Colo. |
| Keystone Portland Cement Company | Keystone | Pennsylvania | Philadelphia, Pennsylvania |
| Kosmos Portland Cement Company | Kosmos | Kentucky | Louisville, Ky. |
| Lawrence Portland Cement Company | Lawrence Portland | Pennsylvania | New York City |
| Lehigh Portland Cement Company | Lehigh | Pennsylvania | Allentown, Pa. |
| Lone Star Cement Corporation | Lone Star | Maine | New York City |
| Longhorn Portland Cement Company | Longhorn | Texas | San Antonio, Tex. |
| Louisville Cement Company | Louisville | Kentucky | Louisville, Ky. |
| Marquette Cement Manufacturing Company | Marquette | Illinois | Chicago, Ill. |
| Medusa Portland Cement Company | Medusa | Ohio | Cleveland, Ohio |
| Missouri Portland Cement Company | Missouri Portland | Missouri | St. Louis, Missouri |
| Monarch Cement Company | Monarch | Kansas | Humboldt, Kansas |
| Monolith Portland Cement Company | Monolith Portland | Nevada | Los Angeles, California |
| Monolith Portland Midwest Company | Monolith Midwest | Nevada | Los Angeles, California |
| National Cement Company | National | Alabama | Birmingham, Ala. |
| National Portland Cement Company | National Portland | Pennsylvania | Philadelphia, Pennsylvania |
| Nazareth Cement Company | Nazareth | Pennsylvania | Nazareth, Pa. |
| Nebraska Cement Company | Nebraska | Delaware | Denver, Colo. |
| North American Cement Corporation | North American | Delaware | New York City |
| Northwestern Portland Cement Company | Northwestern Portland | Washington | Seattle, Wash. |
| Northwestern States Portland Cement Company | Northwestern States | Iowa | Mason City, Iowa |
| Oklahoma Portland Cement Company | Oklahoma | Oklahoma | Denver, Colo. |
| Oregon Portland Cement Company | Oregon Portland | Nevada | Portland, Oregon |
| Pacific Portland Cement Company | Pacific Portland | California | San Francisco, California |
| Pacific Coast Cement Company | Pacific Coast | Washington | Seattle, Wash. |
| Peerless Cement Corporation | Peerless | Michigan | Detroit, Mich. |
| Pennsylvania Dixie Cement Corporation | Penn-Dixie | Delaware | New York City |
| Petoskey Portland Cement Company | Petoskey | Delaware | Petoskey, Mich. |
| Pittsburgh Plate Glass Company | Pittsburgh Plate Glass | Pennsylvania | Pittsburgh, Pa. |

| Name of Corporation | Abbreviated Name | State of Incorporation | Principal Place of Business |
|---|---|---|---|
| Portland Cement Company of Utah | Portland Cement Company of Utah | Wyoming | Salt Lake City, Utah |
| Riverside Cement Company | Riverside | Delaware | Los Angeles, California |
| San Antonio Portland Cement Company | San Antonio Portland | Texas | San Antonio, Texas |
| Santa Cruz Portland Cement Company | Santa Cruz | California | San Francisco, California |
| Signal Mountain Portland Cement Company | Signal Mountain | Delaware | Chicago, Ill. |
| Southern States Portland Cement Company | Southern States | Georgia | Rockmart, Ga. |
| Southwestern Portland Cement Company | Southwestern Portland | West Virginia | Los Angeles, California |
| Spokane Portland Cement Company | Spokane Portland | Washington | Spokane, Wash. |
| Standard Lime and Stone Company | Standard Lime | Maryland | Baltimore, Md. |
| Standard Portland Cement Company | Standard Portland | Ohio | Cleveland, Ohio |
| Superior Cement Corporation | Superior | Ohio | Portsmouth, Ohio |
| Superior Portland Cement, Inc. | Superior Portland | Washington | Seattle, Wash. |
| Three Forks Portland Cement Company | Three Forks | Montana | Denver, Colo. |
| Trinity Portland Cement | Trinity | West Virginia | Dallas, Texas |
| Union Portland Cement Company | Union Portland | Utah | Denver, Colorado |
| United States Portland Cement Company | U. S. Portland | Colorado | Denver, Colorado |
| Universal Atlas Cement Company | Universal Atlas | Indiana | Chicago, Ill. |
| Valley Forge Cement Company | Valley Forge | Pennsylvania | Catasauqua, Pa. |
| Volunteer Portland Cement Company | Volunteer | Delaware | Knoxville, Tenn. |
| Vulcanite Portland Cement Company | Vulcanite | New Jersey | Philadelphia, Pennsylvania |
| Wabash Portland Cement Company | Wabash | Indiana | Osborn, Ohio |
| Washington Idaho Lime Products Company | Washington Idaho Lime Products Co. | Washington | Spokane, Wash. |
| West Penn Cement Company | West Penn | Pennsylvania | Butler, Pa. |
| Whitehall Cement Manufacturing Company | Whitehall | Pennsylvania | Philadelphia, Pennsylvania |
| Wolverine Portland Cement Company | Wolverine | Michigan | Kalamazoo, Mich. |
| Wyandotte Portland Cement Company | Wyandotte | Michigan | Detroit, Mich. |
| Yosemite Portland Cement Corporation | Yosemite | Delaware | Merced, Calif. |

## IV. Nature of Interstate Trade and Commerce Involved.

### A. *The Commodity.*

17. Cement is an artificial chemical product composed of lime, silica, iron oxide, and alumina found in limestone, shale, marl, clay and other materials. These materials, in proper combination, are subjected to heat until fused into "clinker," which is then ground into the fine powder commonly known as cement. This process of production was developed in England about 1824. It was not produced in the United States in quantity until 1887. Cement is referred to as "Portland Cement" because of its resemblance to the oolitic limestone of Portland, England.

18. The strength and durability of cement varies according to the fineness with which it is ground. The finer the grinding process the greater the strength and durability. Minimum specifications with respect to quality are made by the American Society of Testing Materials, the American Standard Association, and the Bureau of Standards of the United States.

### B. *Uses.*

19. Cement is used in the construction of public and private buildings, dwellings, bridges, highways, air fields, tunnels, canals, dams, wharves, docks, in most heavy construction work, in various public projects, and in the production of pipes and blocks. It is a strategic material in the current war effort. It will be essential in construction, reconstruction, and re-

habilitation after the present war. In many of its uses cement constitutes a major part of the total cost of all materials used. This is particularly true of projects constructed by the Federal, State and municipal governments, such as dams, roads, bridges and public buildings.

C. *Development of Industry.*

20. Since cement is a heavy product the cost of transportation from points of manufacture to points of use constitutes a substantial part of the delivered cost. High transportation costs have encouraged the construction of cement plants, at numerous scattered points, wherever the necessary ingredients are available in quantity. At the time of filing of this complaint cement plants were located in thirty-five states.

21. The existence of numerous sources of supply of ingredients necessary to the manufacture of cement encouraged the industry to organize for purposes of market and price control. Beginning in 1902, and continuing to the date of filing this Complaint, numerous trade associations have been organized among cement producers. The first organization of domestic cement manufacturers was the Association of American Portland Cement Manufacturers, organized in 1902. In 1916 its name was changed to Portland Cement Association. At that time the membership of the association included substantially all of the cement manufacturers in the United States. The Portland Cement Association is in existence at the time of filing this Complaint.

22. The Cement Manufacturers' Protective Association was organized in 1916, and remained active until 1924. Its membership included virtually all of the cement manufacturers. This association was concerned primarily with the pricing and marketing of cement.

23. The Cement Institute was organized in 1929, and is still in existence at the time of filing this Complaint. During the period 1933-1937, its membership included substantially all of the cement manufacturers in the United States. At the time of filing this Complaint, a substantial number of the cement manufacturers named as defendants herein are members of The Cement Institute. It was organized for the purpose of collecting and disseminating trade statistics on the production, shipment and sale of cement. It adopted a so-called "code of ethics" for members. It also organized within itself a freight rate bureau. This bureau developed so-called "Freight Rate Books" which give the all rail shipping rates from any base mill to any destination point. These Freight Rate Books are kept current. They do not necessarily reflect the information contained in rate books published by carriers since they omit such information as routing, minimum weights and switching charges. In many instances the rates contained in these Freight Rate Books are approximations, rather than the actual rail rates. These Freight Rate Books are used by the defendant manufacturers in calculating delivered prices for cement sold by them.

D. *Method of Sale.*

24. The quantity unit in the sale of cement is a barrel of 376 pounds net weight. Cement is customarily packaged in cloth or paper-bags of 94 pounds each. A barrel makes four bags.

25. Cement is usually sold to processors who sell ready-mixed concrete; to manufacturers of concrete products, such as blocks, pipes, and culverts; to railroads; to building contractors; to dealers for resale to users, and to various governmental agencies, municipal, state and federal. In normal times, sales to dealers for resale account for the largest volume. The public construction program during the 1930's, and more recently the war program, have accounted for a major portion of the cement manufactured and sold in the United States.

26. The defendant cement manufacturers are engaged in the manufacture of cement in approximately 400 plants located in the following states: Alabama, Arkansas, Colorado, California, Florida, Georgia, Idaho, Iowa, Indiana, Illinois, Kentucky, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Montana, Missouri, New Jersey, New York, Nebraska, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming. Sales in interstate commerce are made from these plants to purchasers and users located in all the states of the United States. The defendant cement manufacturers produce

and sell approximately 99 percent of all the cement manufactured and sold in the United States.

27. Prior to the organization of the Association of American Portland Cement Manufacturers in 1902, cement was sold f.o.b. mill. At the time of filing this Complaint, and for many years prior thereto, all cement sold by defendant manufacturers has been and now is normally sold on a delivered price basis only.

28. The defendant manufacturers sell all the cement produced by them on a so-called multiple basing point system. Under this system the delivered price for cement at any given location is determined by using the lowest combination of base mill price plus the all-rail freight rate. Approximately one-half of the cement mills in the United States are base mills and half are non-base mills.

29. Under the multiple basing point system of selling cement, a non-base mill enjoying a natural freight advantage by virtue of location nearer the point of destination avails itself of such advantage, and calculates its freight on the basis of the rate existing between the point of destination and the nearest base mill. The difference in the two freight rates, called "phantom freight," is taken as a profit by such non-base mill. A non-base mill which is located further from the point of destination than the nearest base mill, charges the same freight rate as the base mill, in quoting delivered prices, and absorbs the difference between the larger actual freight paid and the smaller item of freight used in calculating the delivered price.

30. Under this system all price competition among sellers is eliminated, as is alleged more particularly hereinafter. The remaining competitive factors such as quality of merchandise, terms and conditions of payment, have been eliminated through standardization, as will be more fully alleged hereinafter. This system of selling was not made effective among all manufacturers as of any given date. It was adopted piece-meal, over a period of time, by defendant manufacturers, through agreements, as alleged hereinafter. Once adopted, this system of selling is self-perpetuating in the sense that renewed understandings are not necessary to continued maintenance among manufacturers of identical prices at any given location.

31. The multiple basing point system of selling cement has been in effect on a nationwide basis at least since 1929. The Freight Rate Books, kept up to date by the Institute, and used by all defendant manufacturers, permit the perfect operation of the system. Its continued maintenance has been facilitated by the control of approximately 40 percent of the manufacturing capacity of the industry by five manufacturers, namely, Lone Star, Penn-Dixie, Lehigh, Alpha, and Universal-Atlas.

## V. Offenses Charged.

32. For many years, the defendants have been and now are engaged in an unlawful combination and conspiracy to fix and maintain high, unreasonable, identical and non-competitive prices on the sale by them of cement among the several states of the United States.

in violation of Section 1, of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," as amended, (15 U. S. C. Sec. 1), commonly known as the Sherman Act. Defendants threaten to continue such offenses and will continue them unless the relief hereinafter prayed for in this Complaint is granted.

33. The aforesaid combination and conspiracy to restrain interstate trade and commerce by fixing and maintaining high, unreasonable, identical and non-competitive prices on the sale of cement have consisted of a continuing agreement and concert of action among the defendants, the substantial terms of which have been that defendants:

(a) agree to sell cement on a delivered price basis only;

(b) agree to calculate transportation costs on the basis of rail rates only;

(c) agree to designate certain cement mills as "base mills" and to establish punitive bases at or near non-base mills;

(d) agree to fix the delivered price for cement in any given locality by combining the base mill price of the nearest base mill and the all-rail freight rate from such base mill to point of destination;

(e) agree to require non-base mills to quote a delivered price based upon the mill price of the base mill located in closest freightwise to

the point of delivery plus the all-rail freight rate from such base mill to the point of delivery;

(f) agree to permit non-base mills located either at or nearer the point of delivery than the base mill, to charge "phantom freight" or "unearned freight," such freight being the difference between the freight from the non-base mill to point of destination and the freight from the more distantly located base mill to point of destination;

(g) agree to permit mills to absorb freight in instances where they are located at a greater distance from the point of delivery than the nearest base mill;

(h) agree to systematically vary their net mill prices so that each may quote identical delivered prices at any given locality, regardless of differences in actual transportation cost;

(i) agree to eliminate possible mistakes or differences in the calculation of all-rail freight rates by collectively preparing and using so-called "Freight Rate Books" for use in quoting delivered prices at any particular locality;

(j) agree to disregard, in many instances, actual freight rates contained in railroad tariffs and to substitute freight rate approximations in preparing their so-called "Freight Rate Books";

(k) agree to adopt estimated rail freight rates rather than to apply the regular land grant rail freight rates to be added to base mill prices so as to insure identical price quotations among them on bids submitted by the Federal Government;

(l) agree to deprive the Federal Government of the benefits to which it is entitled under land grant rates by increasing the f.o.b. net mill prices on bids on Federal projects in exactly the same amount as the difference between the land grant rates and regular rail rates between the same points;

(m) agree to refuse to sell cement on an f.o.b. mill basis;

(n) agree to refuse to quote delivered prices except on specific quantities and at specific points of delivery;

(o) agree to refuse to ship cement by motor truck, by water, or by any other means of transportation, except rail;

(p) agree, when making sales of cement delivered to buyers' trucks at the mill, to include in the charge the all-rail freight rate from the nearest base mill to the point of destination;

(q) agree to refuse to sell to purchasers who further transport the cement to destinations for resale where defendants' delivered prices are higher than the delivered prices at the point of initial delivery;

(r) agree to cut prices in areas where cement mills refuse to adhere to their price system, for the purpose of forcing adherence;

(s) agree to impose a low and punitive base mill price in locations where a mill or mills refuse to follow their system of fixing prices, for the purpose of forcing adherence;

(t) agree to insure simultaneous price changes by making proposed price advances effective only in the event that all mills indicate acceptance by issuing similar announcements within five days;

(u) agree to discourage price reductions by requiring that they must apply to all cement sold during the five days immediately preceding the price change;

(v) agree to standardize trade discounts to dealers, allowances for return of cloth bags and the time in which discounts are applicable;

(w) agree to facilitate price advances by controlling production and preventing the accumulation of surpluses;

(x) agree to refuse to offer buyers any special inducements unless published or made known to all producers, where the purpose or effect is to increase sales of a particular mill;

(y) agree to allocate business among themselves by keeping shipments of each mill in balance with other competing mills in relation to the percentage which the productive capacity of

each mill bears to the total productive capacity of all mills located in a particular area;

(z) agree to collect, compile and interchange among themselves data relating to their detailed operations, productive capacity, sales, costs, etc.;

(aa) agree to fill orders for one another so as to permit the mill taking the order to obtain a higher net mill price than would be possible in the event such mill made the shipment;

(bb) agree with cement dealers and dealer organizations as to the classes of trade to which direct sales should be made and as to what classes sales should be made through dealers;

(cc) agree to blacklist and boycott dealers who purchase any part of their requirements from foreign producers;

(dd) agree to eliminate price competition among themselves on direct sales, and among themselves and dealers on resale, and among dealers, by refusing to sell to dealers who do not adhere to their pricing policy;

(ee) agree to standardize specifications with respect to quality of cement;

(ff) agree to advertise falsely that the standard cement manufactured by them is identical in quality.

34. During the period of time covered by this Complaint, and for the purpose of forming and effectuating

the aforesaid combination and conspiracy to restrain interstate trade and commerce by fixing and maintaining high, unreasonable, identical and non-competitive prices in the sale of cement, the defendants by agreements and concerted action, have done the things which, as hereinbefore alleged, they conspired to do.

## VI. Effects of the Conspiracy.

35. The aforesaid agreements and concerted action of the defendants, pursuant to and in furtherance of the combination and conspiracy alleged herein, have had the effect, as intended by the defendants, of unreasonably suppressing competition in the sale of cement in the United States; of preventing the determination of cement prices by free and competitive selling; of raising, fixing, and maintaining high, identical and non-competitive prices on the sale of cement throughout the United States.

36. The adoption and joint use by defendants of the multiple basing point system in the sale of cement throughout the United States, has eliminated all natural competitive differences among cement manufacturers. The industry operates as though it were a single concern instead of more than eighty-five separate companies. Wasteful and unnecessary cross shipping is unavoidable under the multiple basing point system.

37. On sealed bids to the Federal Government, the largest single buyer during the past fifteen years, quotations from the various companies with few excep-

tions, have been identical to the ten thousandths of a cent per barrel, although distances between the bidding mills and point of delivery may vary as much as several hundred miles as among the bidding mills. Identical bids were received on many of the Federal Government's largest projects, including Boulder Dam, Grand Coulee Dam, Bonneville Dam, and the series of dams comprising the Tennessee Valley Authority. Identical bids were received not only by the Bureau of Reclamation, but by the War and Navy Departments in the construction of war projects. Sealed bids to agencies of state governments show absolute identity as among bidding cement manufacturers.

PRAYER.

Wherefore, the Plaintiff prays:

1. That pursuant to Section 5 of the Sherman Act, a summons issue to each of the defendants commanding it to appear herein and to answer the allegations contained in this Complaint and to abide by and perform such orders and decrees as the Court may make in the premises;

2. That the aforesaid combination and conspiracy, contracts, agreements, arrangements, and understandings in restraint of interstate trade and commerce be adjudged and decreed to be unlawful, and that they be adjudged and decreed to be in violation of Section 1 of the Sherman Act;

3. That the Court adjudge and decree that the defendants have combined and conspired to restrain un-

reasonably the interstate trade and commerce involved in the manufacture, distribution, and sale of cement throughout the United States in violation of Section 1 of the Sherman Act;

4. That the Court adjudge and decree that the quoting or selling of cement among the several states of the United States at prices calculated or determined pursuant to or in accordance with the multiple basing point system of pricing, as that term is used herein, constitutes a violation of Section 1 of the Sherman Act;

5. That the Cement Institute be dissolved and that no association with similar functions and purposes be permitted to be organized in the cement industry;

6. That each of the defendant cement manufacturers, and any of their subsidiaries or affiliated companies, their officers, directors, agents and employees, and their respective successors, assignees and transferees be required

(a) To quote prices and to sell cement on either an f.o.b. plant basis or a delivered price basis, at the election of the buyer;

(b) To establish for each mill separately the same mill price for all buyers from such mill who are of the same class, purchasing similar quantities, and without reference to destination point or use;

(c) To refrain from varying or changing such base mill price regardless of the mode of transportation employed by the buyer;

(d) to quote or sell at delivered prices by charging the sum of the mill price plus actual common carrier transportation, with privilege reserved to the buyer to designate the mode of transportation; provided, however, that any mill be permitted to meet the delivered price of any competing mill at any destination point, by absorbing a part of the transportation cost; and provided further, however, that no mill shall be permitted to charge any buyer a delivered price which is higher than the sum of the mill price plus actual common carrier transportation.

7. That the defendant cement manufacturers, and any of their subsidiaries or affiliated companies, their officers, directors, agents, and employees, and their respective successors, assignees and transferees, be perpetually enjoined and restrained, both individually and by combination among themselves, from

(a) Designating certain cement mills as "base mills" with base prices and others as "non-base mills" with no base prices;

(b) Allowing a competing base mill to fix the base mill price at which all bidding mills will sell;

(c) Systematically varying net mill prices so as to permit competing mills to arrive at an identical delivered price quotation;

(d) Charging the buyer "phantom" or "unearned" freight;

(e) Selling cement on a delivered price basis only;

(f) Shipping cement by rail only;

(g) Quoting an f.o.b. mill price which is higher for or which discriminates against purchasers desiring to use transportation facilities other than rail, such as, motor truck and water transport;

(h) Compiling, publishing and using any common transportation rate factor useful in calculating and quoting identical delivered prices;

(i) Depriving the Federal Government of the benefits to which it is entitled under land grant rates by increasing the f.o.b. net mill return in the same proportion that the land grant rates differ from the regular rates for the same commodity;

(j) Discriminating in price among purchasers of the same general class;

(k) Fixing resale prices for dealers and other purchasers;

(l) Refusing to quote prices or to sell cement to dealers who buy, ship or sell imported cement;

(m) Restricting the quantity of cement produced and the places where cement may be stored and sold in local markets in less than carload lots;

(n) Falsely advertising that standard cement manufactured by them is identical in quality;

(o) Agreeing with dealers as to the classes of trade which shall be sold direct by the manufacturers and what types or classes shall be sold by dealers;

(p) Collecting, compiling, circulating or exchang-

ing among themselves statistical data relating to production, stocks, sales, shipments and prices of cement;

(q) Standardizing the quality of cement produced, trade discounts to dealers, allowances for return of cloth bags, the form of sales contracts, and the time within which discounts shall be available;

8. That plaintiff recover the costs and disbursements of this suit;

9. That plaintiff shall have ~~such other and~~ further relief as the Court shall deem just and proper.

s/ ERNEST L. BRANHAM,
ERNEST L. BRANHAM,
*Special Attorney.*

s/ FRANCIS BIDDLE,
FRANCIS BIDDLE,
*Attorney General.*

s/ WENDELL BERGE,
WENDELL BERGE,
*Assistant Attorney General.*

s/ HOLMES BALDRIDGE,
HOLMES BALDRIDGE,
s/ GEO. B. HADDOCK,
GEORGE B. HADDOCK,
*Special Assistants to the Attorney General.*

s/ THOMAS J. MORRISSEY,
THOMAS J. MORRISSEY,
*United States Attorney.*

## EXHIBIT 3-B.

IN THE

# DISTRICT COURT OF THE UNITED STATES

For the District of Colorado.

CIVIL No. 1291.

UNITED STATES OF AMERICA, COMPLAINANT

*v.*

CEMENT INSTITUTE, ET AL., DEFENDANTS

## AMENDMENT TO COMPLAINT.

(Filed August 20, 1945.)

Pursuant to Rule 15 (a) of the Rules of Civil Procedure, Complainant hereby amends its Complaint by striking Paragraph 6 (d) from the Prayer thereof [Paragraph 6 (d) being found on pages 20 and 21 of the printed copy of the Complaint as originally filed].

ERNEST L. BRANHAM,
*Special Attorney.*

TOM C. CLARK,
*Attorney General.*

WENDELL BERGE,
*Assistant Attorney General.*

HOLMES BALDRIDGE,

GEORGE B. HADDOCK,
*Special Assistants to the Attorney General.*

THOMAS J. MORRISSEY,
*United States Attorney.*

## EXHIBIT 4.

Reprint of a typical price quotation sheet of a steel manufacturer showing the manner in which base prices and basing-points are used, differing from the method in the cement industry of quoting "delivered prices" at various destinations.

### Base Prices—Second Quarter, 1937

#### SEMI-FINISHED CARBON STEEL

| Product | Base Price F. O. B. Basing Points Per Gross Ton | |
|---|---|---|
| Re-rolling Quality Blooms, Billets and Slabs | $37.00 | Chicago, Ill. |
| Re-rolling Quality Blooms, Billets and Slabs | 37.00 | Gary, Ind. |
| Re-rolling Quality Billets | 39.00 | Duluth, Minn. |
| Forging Quality Blooms, Billets and Slabs | 43.00 | Chicago, Ill. |
| Forging Quality Blooms, Billets and Slabs | 43.00 | Gary, Ind. |
| Forging Quality Billets | 45.00 | Duluth, Minn. |
| Sheet Bars | 37.00 | Chicago, Ill. |
| | Per 100 Lbs. | |
| Skelp | $ 2.10 | Chicago, Ill. |

#### SHEETS

| Product | Base Price Per 100 Lbs., F. O. B. Basing Points Gary, Indiana | Pittsburgh, Pennsylvania | Birmingham, Alabama | Pacific Ports (See Note 2) |
|---|---|---|---|---|
| Hot Rolled Sheets, #10 Ga. | $2.50 | $2.40 | $2.55 | $2.95 |
| Hot Rolled Annealed Sheets, #24 Ga. | 3.25 | 3.15 | 3.30 | 3.80 |
| Cold Rolled Mill Run Sheets, #10 Ga. | 3.10 | 3.00 | 3.15 | 3.60 |
| Cold Rolled Sheets, #10 Ga. | 3.20 | 3.10 | 3.25 | 3.70 |
| Cold Rolled Mill Run Sheets, #20 Ga. | 3.55 | 3.45 | 3.60 | 4.00 |
| Cold Rolled Sheets, #20 Ga. | 3.65 | 3.55 | 3.70 | 4.10 |
| Inland Iron Enameling Sheets, #10 Ga. | 3.00 | 2.90 | | |
| Inland Iron Enameling Sheets, #20 Ga. | 3.60 | 3.50 | | |
| Galvanized Sheet, #24 Ga.† | 3.90 | 3.80 | 3.95 | 4.40 |
| Galvanized Copper Alloy Steel Culvert Sheets (Not Corrugated) #16 Ga. | 4.00 | 3.90 | 4.05 | 4.55 |
| Galvanized Copper Iron Culvert Sheets (Not Corrugated), #16 Ga. | 4.30 | 4.20 | 4.35 | 4.85 |
| Galvanized Pure Iron Culvert Sheets (Not Corrugated), #16 Ga. | 4.35 | 4.25 | 4.40 | 4.90 |

## EXHIBIT 5.

(COMMISSION'S EXHIBIT 3201E—
Marquette's Price Quotation Form Used in 1937)

MARQUETTE CEMENT MANUFACTURING CO.
Marquette Building, Chicago

Plants at
La Salle, Ill.
Cape Girardeau, Mo.
Memphis, Tenn.
St. Louis, Mo.

MARQUETTE
CEMENT

Effective..... we quote prices as follows:

Marquette Portland Cement
In cloth, $.....per standard barrel
In paper, 25 cents per barrel less than cloth

Marquette High Early Strength Portland Cement
In cloth, $.....per standard barrel
In paper, 25 cents per barrel less than cloth

(Above prices include package)

In bulk, 45 cents per barrel less than cloth.

In carload lots f.o.b. station named above, or stations on the attached list.

Marquette Portland Cement and Marquette High Early Strength Portland Cement can be shipped in mixed carloads.

Prices for acceptance on or before effective date of this quotation.

Shipment to be made within fifteen (15) days from date of order.

Quantity not to exceed one car at each destination named unless otherwise agreed.

This quotation is subject to change without notice and is not binding until orders have been accepted by this Company in writing.

Prices for specific work, requiring deliveries beyond fifteen days, will be quoted upon application accompanied by full information and detailed description of work.

This quotation is subject to the terms and conditions on both sides hereof.

Yours very truly,
MARQUETTE CEMENT MANUFACTURING COMPANY